

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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*In re* :  
: PROMESA  
THE FINANCIAL OVERSIGHT AND : Title III  
MANAGEMENT BOARD FOR PUERTO RICO, :  
:  
as representative of : Case No. 17-BK-3283 (LTS)  
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THE COMMONWEALTH OF PUERTO RICO, : (Jointly Administered)  
*et al.*,<sup>1</sup> :  
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Debtors. :  
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*In re* :  
: PROMESA  
THE FINANCIAL OVERSIGHT AND : Title III  
MANAGEMENT BOARD FOR PUERTO RICO, :  
:  
as representative of : Case No. 17-BK-04780 (LTS)  
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PUERTO RICO ELECTRIC POWER : **Court Filing Relates Only to PREPA**  
AUTHORITY (PREPA), :  
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Debtor. :  
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**URGENT MOTION OF CORTLAND CAPITAL MARKET SERVICES LLC,  
AS ADMINISTRATIVE AGENT, AND SOLUS FOR ORDER SETTING  
BRIEFING SCHEDULE IN CONNECTION WITH THEIR URGENT  
MOTION TO COMPEL DISCOVERY RESPONSES IN CONNECTION  
WITH PREPA RSA SETTLEMENT MOTION**

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

Cortland Capital Market Services LLC (“Cortland” or the “Agent”), as successor administrative agent for lenders under the Credit Agreement, dated as of May 4, 2012, among PREPA, Scotiabank, and the lenders party thereto (as amended, the “Scotiabank Credit Agreement”), and SOLA LTD, Solus Opportunities Fund 5 LP, Ultra Master LTD and Ultra NB LLC (collectively, “Solus”), as lenders to PREPA under the Trade Finance Facility Agreement, dated as of July 20, 2012, among PREPA and Citibank, N.A., as predecessor to the existing lenders thereunder (as amended, the “Citibank Credit Agreement,” together with the Scotiabank Credit Agreement, the “Fuel Lines”), respectfully submit this urgent motion (the “Urgent Motion”) requesting that the Court enter an order, substantially in the form attached hereto, setting a briefing schedule with respect to Cortland and Solus’s *Urgent Omnibus Motion to Compel Discovery Responses In Connection with PREPA RSA Settlement Motion* (the “Motion to Compel”).

The Motion to Compel seeks a supplemental production of documents by the Government Parties and an expanded Rule 30(b)(6) deposition in connection with the *Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(a)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement and Tolling Certain Limitations Periods* [Dkt. No. 1235] (the “Settlement Motion”). This Urgent Motion is a request to set an expedited briefing schedule on the Motion to Compel. Specifically, Cortland and Solus respectfully request that the Court direct that any responses to the Motion to Compel be due on August 9, 2019, and replies be due on August 14, 2019.

In support of this Urgent Motion, Cortland and Solus respectfully state as follows:

### **JURISDICTION AND VENUE**

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject-matter jurisdiction over this matter pursuant to PROMESA § 306(a). Venue is proper subject to PROMESA § 307(a).

### **RELIEF REQUESTED**

2. By this Urgent Motion, Cortland and Solus seek the entry of the attached Proposed Order setting an expedited briefing schedule for the Motion to Compel.

### **BASIS FOR RELIEF**

3. Cortland and Solus seek to compel the Government Parties to produce documents and provide Rule 30(b)(6) witnesses concerning PREPA’s *Conditional Motion to Make an Offsetting Change in Base Rate Charges* (the “Rate Motion”), which was filed recently with the Puerto Rico Energy Bureau. The Rate Motion seeks approval of a reduction in the base rate being charged by PREPA to customers in order to offset the Settlement Charge contemplated by the Settlement Motion.

4. Cortland and Solus have good cause to file the Motion to Compel at this time. The Fuel Line Lenders learned of the Rate Motion on July 15, 2019, ten days after the deadline to serve document requests and deposition notices.<sup>2</sup> Upon learning about the Rate Motion, the Fuel Line Lenders acted immediately to gather more information, serving the Document Requests and 30(b)(6) Notices the same day. The Government Parties served their responses and objections on July 19, 2019 and refused to provide the requested discovery. The parties met and

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<sup>2</sup> See Revised Order Extending and Establishing Certain Deadlines Applicable to the Joint Motion of PREPA and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(a)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement [ECF No. 1235] [Dkt. No. 1366] at 2.

conferred on July 22, 2019 and the Government Parties committed to provide a further response, but that has not occurred.

5. Good cause exists to set an expedited briefing schedule. Fact discovery is currently scheduled to close on August 21, 2019, objections to the Settlement Motion are currently due on August 27, 2019, and the hearing on the Settlement Motion is currently scheduled for October 3, 2019.<sup>3</sup> The Government Parties requested that they be given until August 9, 2019 to respond to the Motion to Compel, and the proposed briefing schedule honors that request.

6. Pursuant to the Order dated July 12, 2019,<sup>4</sup> discovery motions filed after July 16, 2019, such as this one, will be taken on submission. Cortland and Solus are nonetheless available if the Court wishes to schedule the Motion to Compel for a hearing.

#### **CERTIFICATION**

7. Pursuant to Local Rule 9013-1 and paragraph I.H of the Case Management Procedures, Cortland and Solus hereby certify that they have (a) carefully examined the matter and concluded that there is a true need for an urgent ruling; (b) not created the urgency through a lack of due diligence; (c) made a bona fide effort to resolve the matter without filing the Motion to Compel; (d) made reasonable, good faith communications in an effort to resolve or narrow the

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<sup>3</sup> See *Second Revised Order Extending and Establishing Certain Deadlines Applicable to the Joint Motion of Puerto Rico Electric Power Authority and AAFAF Pursuant to Bankruptcy Code Sections 362, 502, 922, and 928, and Bankruptcy Rules 3012(a)(1) and 9019 for Order Approving Settlements Embodied in the Restructuring Support Agreement* [ECF No. 1235] [Dkt. No. 1534] at 3-4. The Fuel Line Lenders reserve all rights to seek modifications of the schedule, including due to delays in document productions and other discovery.

<sup>4</sup> See *Order (A) Granting the Urgent Motion in Limine to Exclude Testimony Offered by the Energy Non-Profits, the Environmental Non-Profits, and SOMOS, (B) Granting in Part the Urgent Motion in Limine to Exclude Testimony Offered by UTIER, SREAEE, and Windmar, and (C) Modifying the Current Briefing Schedule Pertaining to Discovery Motions* [Dkt. No. 1457] at 3.

issues being brought to the court; and (e) conferred with the Government Parties who, as of the date of this filing, have not informed Cortland and Solus of their intent to oppose the relief requested herein and requested the August 9, 2019 response date.

**CONCLUSION**

8. For the foregoing reasons, the Fuel Line Lenders respectfully request that the Court enter the Proposed Order appended hereto.

Dated: August 2, 2019

Respectfully submitted,

/s/ Nayuan Zouairabani

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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as representative of : Case No. 17-BK-3283 (LTS)  
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THE COMMONWEALTH OF PUERTO RICO, : (Jointly Administered)  
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as representative of : Case No. 17-BK-04780 (LTS)  
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PUERTO RICO ELECTRIC POWER :  
AUTHORITY (PREPA), :  
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Debtor. :  
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**[PROPOSED] ORDER GRANTING URGENT MOTION OF CORTLAND CAPITAL  
MARKET SERVICES LLC, AS ADMINISTRATIVE AGENT, AND SOLUS FOR  
ORDER SETTING BRIEFING SCHEDULE IN CONNECTION WITH THEIR  
URGENT MOTION TO COMPEL DISCOVERY RESPONSES IN  
CONNECTION WITH PREPA RSA SETTLEMENT MOTION**

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

Upon consideration of the *Urgent Motion of Cortland Capital Market Services LLC, as Administrative Agent, and Solus for Order Setting Briefing Schedule in Connection with their Urgent Motion to Compel Discovery Responses in Connection with PREPA RSA Settlement Motion* (the “Motion”),<sup>2</sup> filed on August 2, 2019, and it appearing that (i) the Court has subject matter jurisdiction over this Motion pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a); (ii) venue of this proceeding and the Motion is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a); (iii) notice of the Motion was adequate and proper under the circumstances and no further or other notice need be given; and after due deliberation and sufficient cause appearing therefor, the Court concludes that Cortland Capital Market Services LLC, as administrative agent, SOLA LTD, Solus Opportunities Fund 5 LP, Ultra Master LTD and Ultra NB LLC have satisfied the requirements for an order setting an expedited briefing schedule on their Motion to Compel,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. All objections and responses to the Motion to Compel filed concurrently with the Motion shall be due on August 9, 2019.
3. Cortland and Solus’s reply shall be due on August 14, 2019.

Dated: \_\_\_\_\_, 2019

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Honorable Judith G. Dein  
United States Magistrate Judge

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<sup>2</sup> Capitalized terms not defined have the meanings given in the Motion.